

VZCZCXRO8795  
PP RUEHDBU RUEHLN RUEHVK RUEHYG  
DE RUEHEK #0385/01 0820529  
ZNR UUUUU ZZH  
P 230529Z MAR 06  
FM AMEMBASSY BISHKEK  
TO RUEHC/SECSTATE WASHDC PRIORITY 6982  
INFO RUCNCIS/CIS COLLECTIVE PRIORITY  
RUEHAK/AMEMBASSY ANKARA PRIORITY 0504  
RUEHBJ/AMEMBASSY BEIJING PRIORITY 1448  
RUEHBUL/AMEMBASSY KABUL PRIORITY 0151  
RUEAIIA/CIA WASHDC PRIORITY  
RHEFDIA/DIA WASHDC PRIORITY  
RUEHVEN/USMISSION USOSCE PRIORITY 1827  
RUCNDT/USMISSION USUN NEW YORK PRIORITY 1210  
RUEHNO/USMISSION USNATO BRUSSELS BE PRIORITY  
RUEHBS/USEU BRUSSELS PRIORITY  
RUEKJCS/SECDEF WASHDC PRIORITY  
RUEKJCS/JOINT STAFF WASHDC PRIORITY  
RHEHNSC/NSC WASHDC PRIORITY

UNCLAS SECTION 01 OF 03 BISHKEK 000385

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SENSITIVE  
SIPDIS

E.O. 12958: N/A

TAGS: [KCRM](#) [KJUS](#) [PGOV](#) [KMDR](#) [KG](#)

SUBJECT: KYRGYZ JUDICIAL INDEPENDENCE (OR THE LACK THEREOF)

11. (SBU) Summary: The issue of judicial independence in the Kyrgyz Republic continues to be problematic, with the judiciary little more than a tool of the executive branch. Even with the ouster of President Akayev in March 2005 and the guarded optimism that judicial reforms might follow, little has changed to improve the situation of the judiciary in terms of its actual independence. Salaries remain woefully low, training insufficient, and corruption rampant ) all resulting in a Kyrgyz public deeply distrustful of the judiciary. End Summary.

#### Soviet Legacy Continues

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12. (SBU) As in most post-Soviet states, the legal system in Kyrgyzstan is still based largely on Soviet and, to a lesser extent, Tsarist Russian civil law. During Soviet times, of course, there was no concept of judicial independence, as the Communist Party controlled the court system. When the Soviet Union collapsed, this lack of judicial independence continued in the Kyrgyz Republic, with the executive branch stepping in to take over the role that the Communist Party had in directing the judiciary, influencing decisions, and appointing and removing judges. Even with the changes that have taken place since independence, the judiciary in the Kyrgyz Republic still bears a striking resemblance to the Soviet system, especially as regards judicial independence.

13. (U) Under the current constitution, the judiciary is divided between two main bodies at the national level ) the Supreme Court and the Constitutional Court (the High Court of Arbitration was abolished in 2003, with jurisdiction reverting to the Supreme Court). The Supreme Court acts as the highest appeals court for both civil and criminal cases, while the Constitutional Court oversees only cases involving constitutional interpretation and presidential elections. Lower courts include first-tier district or municipal (rayon) courts and second-tier regional (oblast) courts. Original jurisdiction rests only with district-level courts, with regional courts acting only as appellate courts. Separate courts also exist for commercial and military matters.

#### Appointment and Training of Judges

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14. (SBU) The appointment and removal of judges is another area firmly under the control of the executive, with the President responsible for nominations to the Supreme Court and Constitutional Court and responsible for appointments to the lower courts. The removal of judges, except from the Supreme and Constitutional Courts, continues to be at the discretion of the President. Although structures are now in place for the President's appointments to be confirmed by the Parliament, much remains to be done. In addition to the problem of judicial appointments, the issue of training is also quite problematic. Qualifications for judges are rather low (in general, simply a law degree and 5-10 years' experience "in the field of law" depending on which court the judge is appointed) and training provided to new judges is non-existent.

#### Judicial Changes under Akayev

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15. (SBU) There have been numerous changes to the judicial system since independence, culminating in the constitutional amendments of February 2003, which introduced numerous structural changes to the judicial system, such as new legal codes, jurisdiction restructuring and formal establishment of the independence of the judiciary. The 2003 version of the constitution stripped the Constitutional Court of most of its power. It now hears only a small handful of cases each year.

16. (SBU) Even where changes have been made to bring the Kyrgyz judiciary more in line with internationally accepted legal norms, these changes have routinely been ignored, as the judicial system remains firmly under the control of the executive branch despite constitutional guarantees of

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independence. Under the current constitution, the judicial branch is guaranteed independence, and transparent rules for appointing and removing judges are in place, although in practice these guarantees are routinely violated. Under President Akayev, little of substance changed with regards to the issue of judicial independence, with the executive still retaining significant control over the judiciary at every level.

#### Optimism after March Events

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17. (SBU) After the events of last March, and the subsequent election of a new government, there was reason for some optimism with regards to the expansion of the judiciary's role, and even a stated commitment from the government itself that this issue would be addressed. While advances in the role and independence of the Parliament have been quite obvious; similar advances in the role and independence of the judiciary have not been forthcoming. As with many reforms initially proposed by the new government, little of substance has actually developed. The overall result is that the judiciary still has not incorporated many basic protections afforded in Western jurisprudence; and in cases where these protections are present on paper, such as the presumption of innocence for the accused, they are often ignored.

#### Payment of Judges and the Issue of Corruption

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18. (SBU) It is widely held that the judiciary itself is plagued by corruption and inconsistency. Even if judges were not under the control of the executive with regards to certain decisions, the issue of bribery, stemming in part from the woefully low salaries for judges, would add another very serious impediment to judicial independence. The Chairperson of the Constitutional Court said publicly that while an average judge in Kazakhstan makes \$2,000 per month, her salary is only \$200 per month. According to Freedom House's "Countries at the Crossroads 2004", "court decisions

often reflect the interest first of the executive and second of those who pay bribes." Given the present system, the level of judicial independence in the Kyrgyz Republic is extremely low.

¶9. (U) In a recent survey of 60 judges who attended a workshop entitled, "Making the Judicial System an Effective Branch of Government," 98 percent responded that lack of judicial independence was either, "a serious problem" (20 percent) or "a very serious problem" (78 percent) hampering the work of the judicial system in Kyrgyzstan. While judges themselves are certainly part of the problem, until substantial reforms are undertaken and enforced, little improvement can be expected.

#### The Future of Judicial Independence

¶10. (U) The Millennium Challenge Corporation, which has recently decided to grant the Kyrgyz Republic Threshold Status, identified judicial independence as one area in which improvement needs to be made before funding can be given. Currently, two important draft laws are under consideration that could affect both the independence of the judiciary and the status of MCA threshold program funding: one draft law addresses the status of judges and the other the status of the Supreme Court. The outcome of both draft laws is being carefully watched, especially in terms of how judicial independence may be affected.

¶11. (SBU) Comment: The past year has been a tumultuous one for the Kyrgyz Republic. Often lost in the shuffle is the role of the judiciary )- Kyrgyzstan's third and least visible branch of government. While we have witnessed the growth of parliamentary independence to some extent over the past year, we have not witnessed a similar expansion of the independence of the judiciary. It remains largely under the influence of the executive branch, and thus not an independent third branch of government providing much needed

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checks and balances in government.  
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